No. 76-1783

In the Supreme Court of the United States

OCTOBER TERM, 1977

WILLIAM LEDEE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1-12) is reported at 549 F. 2d 990.

JURISDICTION

The judgment of the court of appeals was entered on March 31, 1977. A petition for rehearing was denied on April 29, 1977 (Pet. App. 13). Mr. Justice Powell extended the time for filing a petition for a writ of certiorari to June 8, 1977, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner was entitled to a list of government witnesses prior to trial.

2. Whether the trial court erred in declining to ask propective jurors five proposed questions.

STATEMENT

Following a jury trial in the United States District Court for the Northern District of Georgia, petitioner was convicted of six counts of causing falsely made and forged securities to be transported in interstate commerce, in violation of 18 U.S.C. 2314. He was sentenced to a total of six years' imprisonment. The court of appeals affirmed (Pet. App. 1-12).

1. In March 1973, petitioner was advised by an official at the Pan American Bank that an account at the bank, maintained in the name of the Advertising Group, Inc., was being closed because of the number of checks that had been returned for insufficient funds (Tr. 83). On March 22, 1973, the bank sent petitioner a letter formally notifying him that the Advertising Group account would be closed as of March 23, 1973 (Tr. 76-77, 83-85).

In May 1974, petitioner deposited seven checks drawn on the closed account, totalling over $100,000, with the Trust Company Bank in Atlanta, Georgia (Tr. 71, 100-106). These checks were signed by "Siempre te Quiero," who was not an authorized signer for the Advertising Group (Tr. 61-62, 178-180). Each of these checks was returned marked "account closed," and petitioner was sent written notice to that effect (Tr. 100-106). Additionally, the Vice President of the Trust Company Bank met with petitioner on May 22 and 24, 1974, and advised him that the Advertising Group account was closed; petitioner was specifically told not to deposit any more checks drawn on that account (Tr. 124-125). Despite this warning, petitioner deposited three more Advertising Group checks (Tr. 125).

2. At trial, petitioner contended that he did not know that the Advertising Group account had been closed. He further claimed that he received $100,000 worth of post-dated Advertising Group checks for the sale of the company to a William Patterson in June 1973. Petitioner explained that Siempre te Quiero was a Lebanese individual employed as an accountant by Patterson (Tr. 247-254, 284-285). Patterson, however, testified that, while he was acquainted with petitioner, he had not purchased the company from him, nor had he ever employed an individual named Siempre te Quiero (Tr. 154). Petitioner's girlfriend, Gail Gunn, testified that "siempre te quiero" was a favorite Spanish phrase of petitioner's meaning "I will always want you and love you" (Tr. 171). Ms. Gunn testified further that she had received at least two cards or letters per week from petitioner since December 1972, all of which were signed with the phrase "siempre te quiero" (Tr. 179-180). Based upon her familiarity with petitioner's handwriting, she identified the "siempre te quiero" signatures on all seven Advertising Group checks as having been written by petitioner (Tr. 179-180, 188, 191).

ARGUMENT

1. Petitioner initially contends that he was entitled to a list of government witnesses prior to trial (Pet. 6-11). This Court has recognized, however, that there is "no general constitutional right to discovery in a criminal case," and it has rejected the contention that the government has a general obligation to "reveal before trial the names of all witnesses who will testify unfavorably." *Weatherford* v. *Bursey*, 429 U.S. 545, 559. Although the government is required by statute to provide a list of witnesses to a defendant who is charged with an offense which may be punishable by death (see 18 U.S.C. 3432),

the failure to extend this discovery provision to non-capital cases is not, contrary to petitioner's claim (Pet. 7), a denial of equal protection. Death is a unique punishment, the constitutional implications of which are different from a term of imprisonment or a fine. *Gregg* v. *Georgia*, 428 U.S. 153, 188 (opinion of Justices Stewart, Powell, and Stevens); *Furman* v. *Georgia*, 408 U.S. 238, 286-291 (Brennan, J., concurring), 306-310 (Stewart, J., concurring). Accordingly, Congress' decision to provide those facing the death sentence with certain procedural safeguards, such as access to the list of government witnesses, properly differentiates between offenders on the basis of the maximum potential punishment.

In any event, petitioner was not prejudiced by not having the witness list prior to trial. The crux of petitioner's argument is that if he had obtained a list of prospective witnesses he would have known that the government was not going to call the FBI handwriting expert who had compared the endorsements on two of the checks with the handwriting on petitioner's letters to Ms. Gunn (Pet. 10-11). But the report made by the expert was not admitted into evidence, and the testimony that he would have given was stipulated to by the government and defense counsel, and explained to the jury by the trial court[1] (Tr. 215). Furthermore, as the court below found (Pet. App. 12), there was no promise by the government that the particular FBI examiner who had made the report

[1]It was stipulated that the handwriting expert would testify, if present and under oath, that he was unable to reach a conclusion as to whether the signatures on two of the checks matched the handwriting in the letters "due to the presence of distortion in portions of the questioned writing and the presence of unexplained handwriting characteristics" (Pet. App. 11, n. 8).

would testify, and another FBI expert was available to testify, if needed.[2]

2. Prior to the *voir dire* examination of prospective jurors, petitioner's counsel submitted 40 questions to the court and requested that they be asked during *voir dire*. Petitioner contends that the refusal of the trial court to ask five of those questions, relating to the government's burden of proof, the presumption of innocence, and the defendant's right not to testify,[3] denied him a fair and

[2]We note, moreover, that since the conviction at issue here was the result of petitioner's second trial for this offense (the first having ended in a hung jury (Pet. App. 9)), petitioner had already obtained a complete preview of the government's evidence.

[3]The five questions at issue here were as follows (Pet. App. 5, n. 1):

> (24) Do each of you understand the Government has the burden of proving the Defendant guilty beyond and to the exclusion of any reasonable doubt, and that a reasonable doubt is not a mere fanciful or imaginary doubt, but a doubt to which you can give a reason?
>
> (25) Do each of you understand an indictment has been returned in this case, and is not to be considered by you as evidence or indication of guilt on the part of the Defendant, WILLIAM LEDEE, but rather the indictment is only a vehicle for bringing the person before the Court to stand trial?
>
> (26) Do each of you understand that in a criminal trial the Defendant is not required to present any testimony and does not have to testify in his own behalf, and that this right is given him by the Constitution of the United States?
>
> (27) Would any of you hold it against WILLIAM LEDEE if, in fact, he did not testify? In other words, are there any of you that feel that in a criminal case the defendant should testify despite the fact that he is not required to?
>
> (40) Can each of you accept the proposition of law that a defendant is presumed to be innocent, that he has no burden to establish his innocence, and that he is clothed throughout the trial with this presumption?

impartial jury (Pet. 11-22). This contention is without merit.

In refusing to ask the questions at issue, the trial court explained that their subject matter would be covered by the charge to be given at the conclusion of the trial (Tr. 15-16). Instead, the court asked the prospective jurors (Tr. 37):

> Now, the Court will instruct you, as most of you know who have served on juries, concerning all the various elements of law and the burden of proof that is involved. Are there any of you who feel that for any reason you cannot follow the law as stated to you by the Court in instructions. Are there any of you who have any reason to believe that, if selected as a juror, you could not follow the law as stated by the Court, whether you disagree with the law or not. Are there any of you who feel you could not follow the law.

No juror responded affirmatively to any of this inquiry.

At the conclusion of the trial, the court reminded the jurors of their sworn duty to apply the law as explained to them by the court and instructed them to base their verdict solely upon the evidence (Tr. 334). The court also instructed that the indictment was not evidence; that the government was required to prove petitioner's guilt beyond a reasonable doubt; that petitioner was presumed to be innocent until shown otherwise under that standard; and that petitioner had no obligation to testify or to produce any evidence (Tr. 324-327, 339).[4]

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[4]Petitioner does not challenge the sufficiency of the court's instructions on these matters, which substantially embodied petitioner's requested *voir dire* questions.

The court of appeals correctly determined that the trial court did not abuse its discretion in refusing to ask petitioner's proffered *voir dire* questions. Trial courts have broad discretion in conducting *voir dire* and in deciding which questions will be asked prospective jurors. See Fed. R. Crim. P. 24(a); *Ristaino* v. *Ross*, 424 U.S. 589, 594; *Hamling* v. *United States*, 418 U.S. 87, 139-140; *Ham* v. *South Carolina*, 409 U.S. 524, 527-528. As the court below held (Pet. App. 6-8), trial courts are not required to ask prospective jurors whether they can accept and apply the substance of certain legal concepts such as reasonable doubt and a defendant's presumption of innocence. The trial court here fully instructed the jury at the close of the evidence concerning these matters, and each of the jurors had sworn to abide by these instructions. Petitioner was entitled to no more. *United States* v. *Cosby*, 529 F. 2d 143, 147-149 (C.A. 8), certiorari denied, 426 U.S. 935; *United States* v. *Wooten*, 518 F. 2d 943 (C.A. 3), certiorari denied, 423 U.S. 895; *United States* v. *Crawford*, 444 F. 2d 1404 (C.A. 10), certiorari denied, 404 U.S. 855; *United States* v. *Cockerham*, 476 F. 2d 542 (C.A.D.C.); *United States* v. *Gillette*, 383 F. 2d 843 (C.A. 2); *Stone* v. *United States*, 324 F. 2d 804 (C.A. 5), certiorari denied, 376 U.S. 938.[5]

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[5]The court below specifically rejected the contrary view expressed by a majority of the panel in *United States* v. *Blount*, 479 F. 2d 650, 651 (C.A. 6) (Pet. App. 7, n. 3). We note that this Court denied certiorari in two previous cases that also presented the conflict with *Blount* (*United States* v. *Wooten* and *United States* v. *Cosby*, *supra*), and that in the more than four years since *Blount* was decided, no other court of appeals has followed its holding. In these circumstances, it is unclear whether the Sixth Circuit would adhere to *Blount*; the possible conflict does not now require resolution.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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SEPTEMBER 1977.

DOJ-1977-09